

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/12/2002

C O R A M

THE HONOURABLE Mr.JUSTICE V.KANAGARAJ

Criminal Appeal No. 1189 of 2000

And

Criminal Appeal No. 173 of 2001

1. Aalagupandi. Appellant in C.A.No.1189 of 2000
2. Sangaiah. First appellant in C.A.No.173 of 2001
3. Chellapandi. Second appellant in C.A.No. 173 of 2001

-Vs-

State

By Inspector of Police

Kayatharu Police Station

Thoothukudi District. Respondents in
both the C.As.

Criminal Appeals preferred under Sections 374 (2) and 374
against the judgment dated 19/10/2000 made in S.C.No. 101/1997 by the Court
of Principal Sessions Judge, Tuticorin.

!For appellants ... Mr.Sellathurai
in C.A.No. 1189 of 2000

Mr.M.S.Velusamy
in C.A.No. 173 of 2001

^For respondent ... Mr.A.N. Thambidurai.

:C O M M O N J U D G M E N T

Both the above Criminal Appeals have arisen from out of one and the same judgment of the Court of Principal Sessions Judge,Tuticorin, dated 19/10/2000 rendered in S.C.No. 101 of 1997, thereby convicting the Appellants herein, who were respectively Accused Nos. 3, 1 and 2 before the Trial Court and sentencing them each to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for a further term of two years for the offence proved under Section 304(i) r/w. Section 34 I.P.C.

2. Tracing the history of the Appeals coming to be preferred by the

Appellants, it comes to be known that they were all charged before the Court of Sessions, the trial Court, for an offence punishable under Section 302 I.P.C. on allegations that the deceased was one of the five brothers and the eldest of them all, is the first accused; that in spite of there being a clear partition among all the five, the first accused pledging the shares of others also, obtained a tractor loan from the Bank but did not remit the loan amount as per the agreement and there had been a notice sent by the bank cautioning that if the amount had not been paid, they would bring the properties for auction; that when the matter was discussed by the deceased Arumugha Pandian with another brother Selvapandian, he opined that selling the share of the first accused and the tractor, the loan had to be repaid and others' properties could be saved and the first accused having become aggrieved of this stand taken by the deceased brother having sworn that he would put an end to the life of the deceased and in pursuance of the said previous enmity, on 29/2/1996 at about 4.00 a.m. all the accused joining hands with each other and in furtherance of the common intention to commit murder of the deceased, each armed with one Vettu Aruval, when the deceased was sleeping in the electric motor room near the well, they assaulted the said Arumugha Pandian with the said weapons, causing grievous injuries on his neck, face, right shoulder, left shoulder, left chest, left hand and all other parts of the body, resulting in the instantaneous death of the said Arumugha Pandian on the spot and hence, the Accused Nos. 1 to 3 have been charged for the offence punishable under Section 302 I.P.C.

3. The prosecution, in its endeavor to prove the case put up by them with such standard of proof beyond reasonable doubts as it is required in law, would examine 16 witnesses for oral evidence as P.W.s. 1 to 16, besides marking 23 documents for documentary evidence as Exs. P.1 to P.23 and would also mark 20 Material Objects as M.Os. 1 to 20. In appreciation of these evidence placed on record the trial Court would ultimately arrive at the conclusion that no offence under Section 302 I.P.C. r/w. 34 I.P.C, has been proved but would find an offence under Section 304 (i) r/w. Section 34 I.P.C. having come to be proved, would sentence each of them to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- each, in default to undergo a further term of Rigorous Imprisonment for two years.

4. Assessing the case of the prosecution as it comes to be established in evidence is that P.W.1 Muthammal the wife of the deceased would depose that the first accused is her husband's elder brother and the second and third accused were also known to her; that her husband was born with four others including the first accused; that pledging the properties belonging to all the brothers, the first accused bought the tractor and since he did not repay the loan amount, notice was issued by the Bank to the effect that had not the loan been settled, the lands would be sold in auction and therefore, himself and yet another brother Sella Pandian took the decision to sell away the tractor and a portion of the land belonging to the first accused and settle the dues to the Bank and sell their properties and the said proposal was forwarded to the first accused for which he did not consent; that after their brother Sella Pandian leaving for Madras, the first accused came to her husband and challenged his life for having taken such a decision; that she cautioned her husband to be careful; that about four years back, her husband

went to the fields at 9.00 p.m. one day along with one Murugan and the next day morning by 4.00 a.m., herself and her relative Ramakrishnan went to the field to supply coffee to her husband when all the three accused went to the pump-set room with Aruval and they followed them closely and in a short while, the accused entered into the pump set room and has assaulted him on his shoulder, neck, hand and near the eye and on various parts of the body causing injuries all over the body and the third accused assaulted him standing at the entrance of the motor room; that the said Murugan also woke up and started shouting but the accused having warned him against informing the same to anyone with their life and ran towards south; that her husband died instantaneously on the spot; that herself and Ramakrishnan came to the Village and informed the elders and thereafter went to Kayatharu Police Station and lodged the complaint with the Inspector of Police who reduced the complaint into writing and herself signing the same, the said Ramakrishnan attested the said complaint which is Ex.P.1. She would also identify M.Os. 1 to 3 Aruvals said to have been handled by the accused. 5. P.W.2 Ramakrishnan would also adduce evidence almost adhering the evidence of P.W.1 and would further develop the case a little more stating that the Inspector of Police on receipt of the complaint of P.W.1, which was attested by him came to the spot and examined the witnesses and thereafter in three days, he again came and examined, when he stated that the third accused was riding the tractor of the first accused when himself and the deceased were going; that the deceased told the third accused that himself joining hands with the first accused and running the tractor, he swindled the amount without paying the loan, as a result of which, notice had been sent to him for the amount that is due from himself and the first accused for which the third accused retorted challenging him with dire consequences. P.Ws. 3 and 4 would not adduce any valid evidence and they would deny knowledge of anything about the incidence or any other fact connected to the case. P.W.5 another brother of the first accused and the deceased would speak to the effect that he is working as Deputy Manager in Pallavan Transport Corporation; that the first accused and the deceased are his brothers and he knows the second and third accused also; that 10 or 14 years back, the first accused pledging the properties belonging to all the brothers obtained the tractor loan and did not repay the amount; that notice had been sent to him and the other brothers from the Bank warning that if the loan was not paid, their properties would be sold in auction and therefore, they took the decision to sell away the tractor and the portion of the land belonging to the first accused and clear the loans and to pass on the said message to the Bank and after passing on the information to the Bank when they were returning back home he challenged that with the company of the other two accused, he was going to finish the deceased; that he had already committed a murder and got convicted and warned him also to keep away from the issue; that thereafter the deceased wrote him a letter asking him to come again and settle the issue; that on 29/2/1996, he was given to understand that all the three accused joining hands with each other have murdered his brother Arumugapandian and the letter ultimately sent to him by the deceased would be marked as Ex.P.2. 6. P.W.6 would not depose anything regarding the case. P.W.7 who was then working as Deputy Manager in the Tirunelveli Branch of the State Bank of India would adduce evidence to the effect that one Srinivasan was the Manager then who had then gone as the Regional Manager and that he was conversant with his handwriting

and that the first accused was sanctioned with two loans for the sums of Rs.93,000/- and 25,500/- and certificate bearing the details would be marked as Ex.P.3. P.W.8 is the Village Administrative Officer who would depose to the effect that on 29/2/1996 at about 9.00 a.m. himself and Veeraiya on coming to know that a body was lying in the pump set of the well belonging to Arumugapandian went to the spot where when Inspector of Police and some other Police personnel were examining the witnesses; that the Inspector observed the place of occurrence and prepared Ex.P.4 Observation Mahazar, which was attested by himself and his brother; that then he recovered M. O.4, the blood strained soil. M.O.5 the sample soil. M.O.6 the Philips Radio. M.O.7 battery light. M.O.8 Quartz Clock. M.O.9 match box. M.O.10 beedi packet. M.O.11 Ball point pen. M.O.12 blood strained shirt. M.O.13 blood strained mat. M.Os.14 and 15 were jute clothes and M.O.16 bed sheet. All these material objects would be recovered by Inspector of Police under the cover of Ex.P.5 Form 95.

7. P.W.9 the Village menial at Kayatharu would depose that in the year 1966, one day at 11.00 a.m., he signed the confession statement who he had not seen any of the three accused. P.W.10 yet another menial would sign the confession statement of the first accused in the Police Station, which would be marked as Ex.P.9. P.W.11 the Medical Officer at Kovilpatti Government Hospital, at the time of occurrence would depose that on 29/2/1996, on receipt of Ex.P.10, he conducted the post-mortem at 3.30 p.m. on the dead body of the deceased and would find 10 injuries, one on the front portion of the neck, the second one on the right temporal region extending till the right neck, the third one on the face, the fourth one on the left jaw, the fifth one on the throat, the sixth one on the right shoulder, the seventh one on the left shoulder, the eighth one on the left chest, ninth and tenth one on the left hand. This medical witness would also depose that the face, jaw, teeth and mouth have all been damaged with fractures; that hyoid bone was not seen; that stomach contained semidigested rice particles to the extent of 80 grams. The post-mortem certificate issued by these witnesses would be marked as Ex.P.11. This witness would also opine that these injuries are sufficient to cause the immediate death of a person all of a sudden and all those injuries could have been caused by M.Os.1 to 3 and the death could have been caused 11.30 hours prior to the post-mortem.

8. P.W.12, the Head Constable of Kayatharu Police Station would depose that on 29/2/1996 he was entrusted with the body of the deceased at 12.00 noon and that he took the body to the Government Hospital, Kovilpatti and after the post-mortem was over, he recovered M.Os 17 lungi, M.O.18 towel, M.O.19 waist thread, M.O.20 Titan watch and entrusted the same to the Police Station; that the card issued to him would be marked as Ex.P.12. P.W.13 would depose that on 29/2/1996 at about 11.30 a.m., he took the First Information Report to the Magistrates Court and entrusted the same at 3.15 p.m. and the receipt issued would be marked as Ex.P.13. P.W.14 is one who is working as the Assistant in the Magistrates Court and he would depose that on receipt of Ex.P.14 requisition given by the Inspector of Police for doing chemical analysis on M.Os. 4, 5, 12, 13 and 16, he sent the same to the Chemical Analysis Centre under Ex.P.15 letter and the chemical analysis report received as Ex.P.16. The Serological report is Ex.P.17 and a comparative report sent on P.4 and P.5 is Ex.P.18. P.W.15 who was working as the Inspector of Police

and at the time of the incident at Kayatharu Police Station would depose to the effect of P.W.1 coming to the Police Station accompanied by one Ramakrishnan and giving the statement which got reduced into Ex.P.1 complaint, based on which would register the case in Crime No.67 of 1996 under Section 302 and would prepare Ex.P.19 First Information Report and send the copies to the concerned Court through P.W.13. This witness would also depose, went to the spot and prepared Ex.P.4 Observation Mahazar and would examine the witnesses therein and would recover the M.O.s 4 to 16 under the cover of Ex.P.5 and thereafter, since he got transferred, he went to another Section. P.W.16 is the Inspector who succeeded P.W.15 who having continued the investigation in the above case examining certain witnesses and on coming to know that they have made arrangements to take the accused to the Police custody and on examining them, the first accused gave the confession in the presence of P.Ws. 9 and 10 on 19/3/1996 pursuant to which, M.Os. 1 to 3 have been made under the cover of Ex.P.23 form attested by the witnesses; then on examining the remaining witnesses and making arrangements to send the M.Os. for chemical analysis and collecting the report from the centre and on completion the investigation would lay the charge in the case for an offence punishable under Section 302 read with 34 I.P.C. on 24/7/1996.

9. During arguments, the learned counsel appearing on behalf of the appellants in C.A.No. 173/2001, besides narrating the facts and circumstances of the case as projected by the prosecution would state that the appellants are in jail from the date of judgment; that the date of occurrence was on 28/2/1996 at 10.00 p.m.; that A.1 is the brother of the deceased and A.2 and A.3 are his relatives; that P.W.1 the wife would depose that along with P.W.2 Ramakrishnan, the next day around 4.00 a.m., she went to the spot and at that time, the accused committed the offence which she witnessed. P.W.1 is said to have gone there at that early hour in order to supply her husband with coffee is said to have witnessed the occurrence, which is quite improbable. She is said to have been accompanied by P.W.2 and he is also said to have witnessed the occurrence. Excepting these two eye witnesses, there is no other witness much less, eye witness to the occurrence at all. The deceased is said to have been sleeping in the motor pump set room along with P.W.3; that the accused cut the deceased with the Aruval and caused his death, is the prosecution case; that P.W.2 is the brother's son of the deceased. It is P.Ws.1 and 2 jointly gave Ex. P.1 complaint before P.W.15 Inspector of Police and investigating Officer at 7.30 a.m. and it is said that he prepared Ex.P.19 First Information Report and sent to the Judicial Magistrate, Kovilpatti at 11.30 a.m. through P.W.13 Constable. The inquest was held by these witnesses and then, the body was subjected to post-mortem and P.W.1 Doctor found nine injuries on the body of the deceased, which he would note in Ex.P.11. P.W.5 also recovered M.Os. 4 to 16 on the spot. M.Os. 1 to 3 Aruvals were recovered by P.W.16 Inspector; that all the accused in this case surrendered before the Court; that on 11/3/1996, the Police custody was taken by P.W.16 and on 19/3/1996 at about 8.30 a.m. in the presence of P.Ws.9 and 10, the accused is said to have confessed in Ex.P.22 consequent to the admissible portion of which M.Os.1 to 3 are said to have been recovered under the cover of Ex.P.23 mahazar.

10. Regarding the loan obtained by all the family members for

the first appellant/accused to purchase the tractor and since the loan was not cleared, the land belonging to the other members of the family was also sought to be brought for sale in auction and since the deceased joining hands with P.W.5, yet another brother of the first accused and gave a proposal binding only the land belonging to the share of the first accused and the tractor being allowed to be sold, the properties of others could be saved and therefore, to wreak vengeance, the first accused joining hands with accused Nos. 2 and 3 also committed the murder of the deceased is the firm case of the prosecution.

11. The learned counsel would point out that P.Ws.1 and 2 are not reliable witnesses and their evidence is improbable and unbelievable and there is absolutely no chance for them to have witnessed the occurrence so as to know this accused to have committed the same. There was absolutely no participation for these witnesses in the occurrence at all. In spite of they having come forward to depose that they very closely watched the scene of occurrence without any participation at all and only after dawn, coming to know of the death of her husband, P.W.1 has gone to the Police along with P.W.2 and there is absolutely no evidence for herself and P.W.2 to have been at the spot by 4 .00 a.m., which is not only artificial but also unbelievable.

12. The learned counsel would attempt to falsify the case of the prosecution with the help of the medical evidence stating that in the post-mortem examination P.W.11 the post mortem Doctor would find 80 grams of semi digested rice particles remaining in the stomach; that it is the definite evidence of P.W.1 in the cross-examination that prior to leaving for the pump set room the previous night around 9.00 p.m., the deceased took his last meal and if it is so, to the condition that was seen by post-mortem Doctor, 80 grams of semi digested food particles to remain, the death could have taken place hardly 2 + hours or three hours thereafter and therefore, around 11.30 p.m., at any cost before 12.00 mid-night, the occurrence would have taken place and there is absolutely no reason for 80 grams of semi-digested food particles to remain in the stomach 7 hours after consumption of the same. The theory of the prosecution that the occurrence took place only at 4.00 a.m. in the next morning and that P.Ws. 1 and 2 witnessed the said occurrence; that according to the medical evidence either P.Ws 1 and 2 would not have witnessed the occurrence at all since it should have happened around 11 or 11.30 p.m. the previous day or if the occurrence is to take place by 4.00 a.m. in the next morning as it is the case of the prosecution through the evidence of P.Ws. 1 and 2, there must also be evidence for the deceased to have taken his last meal around 1.30 p.m. or 2.00 p.m. and since absolutely no such evidence comes forth, is nothing but a false fiction.

13. The learned counsel would therefore, submit that P.Ws 1 and 2 are planted for want of eye witness in the case and their evidence is completely unreliable particularly when the medical evidence shatters their version regarding the time of occurrence.

14. On the contrary, to this vital aspect of the case, the Government Advocate on the Criminal Side would argue as to why a hypothetical conclusion should be arrived at regarding the time of occurrence since the

very post- mortem Doctor has himself fixed the exact time of occurrence as 11.30 hours prior to the post mortem and since the post- mortem commenced at 3.30 p.m., the occurrence should have taken place around 4.00 a.m., thus exactly correlating the evidence of P.Ws 1 and 2. According to the learned Government Advocate, it is not only the stomach contents but also the other vital aspects such as Rigor Mortis and the external conditions of the body, which were found at the time of post-mortem by this key witness, he has ultimately given his opinion to the effect that the deceased should have died 11 + hours prior to the conduct of post-mortem and hence, the version of P.Ws. 1 and 2 that the occurrence took place at 4.00 a.m. on 29/2/1996 and there is absolutely no ambiguity so far as this vital aspect of the time of occurrence and therefore, taking only the stomach contents into consideration, the case of the prosecution cannot be decided.

15. The learned counsel appearing on behalf of the appellant in C.A.No.1189 of 2000 would point out that the knife recovered from A.1 has not been sent for medical examination at all; that it is the firm case of the prosecution that the deceased while sleeping inside the motor and pump set room, the occurrence had taken place and that A.1 and A.2 attacked the deceased entering into the said room while A.3 attacked him from outside the room, the learned counsel would point out that it is relevant to note that the body was lying only inside the room and therefore, it is highly doubtful whether P.W.3 would have attacked the deceased in the manner alleged by the prosecution witnesses.

16. The learned counsel would also point out that there was absolutely no motive for A.3 at all and hence, the case of A.3 should be looked into in a different angle without treating his case along with the other accused.

17. The learned counsel for the appellant in C.A.No. 173 of 2001 would further point out that there was a motive for foisting the case against A.1 and A.2. Since a close relative girl of P.W.2 was proposed for marriage with A.2 and since his parents did not consent for the said marriage, A.2 is said to have been falsely implicated in the case. This cannot be accepted since the aggrieved party if at all is not P.W.2 but A.2 and therefore, no motive could be attributed to P. W.2 for foisting the case against A.2. The learned counsel would also further argue that in the facts and circumstances of the case, if at all it would fall under Section 304 (2) instead of 304 (1) and would cite a judgment reported in 2001 6 SC - 145, wherein it is held that

"In such state of medical evidence it will not be proper to draw an inference against the accused of his having committed murder of the deceased punishable under Section 302 I.P.C. The injury dealt by him by a sharp weapon had cut into the intestine. Though an intention to cause death or such bodily injury as is likely to cause death cannot be attributed to him, knowledge is attributable to the accused that an injury by a knife into the abdomen was likely to cause death. As it was a case of sudden fight, the act of this accused would amount to culpable homicide not amounting to murder punishable under Part II of Section 304 I.P.C.

On the part of the learned Government Advocate, he would submit that the prosecution has let in substantial evidence abundantly and in a reliable manner, the prosecution has proved the case beyond reasonable doubts.

18. Elaborating, the learned Government Advocate would say that 16 witnesses have been examined, 23 documents have marked and 20 material objects have also marked and the prosecution has also proved the motive for the murder. The learned counsel would also point out that in the cross-examination of the investigating Officer, it would further come to be known that the first accused has already been convicted and sentenced for a capital punishment for having indulged in another murder earlier and therefore, no leniency should be shown to him even in the punishment. The learned Government Advocate citing the judgment of the Honourable Apex Court reported in *LEELA RAM (DEAD) THROUGH DULI CHAND Vs STATE OF HARYANA AND ANOTHER* (2000 SCC CRIMINAL - 2 22) where the eye witnesses asserted that the accused had fired two shots at the deceased but the Doctor conducting post-mortem examination that both the injuries could have been caused by a single shot and finding two entry injuries on the dead body. Aggrieved at the cross-examination that both the injuries could have been caused by a single shot held, there was not a material contradiction. Evidence should be considered from the point of view of trust worthiness, held, High Court erred in acquitting the accused. Hence conviction under Section 302 I.P.C. and Section 27 Arms Act and sentence of life imprisonment passed by the Sessions Judge restored.

19. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the appellants in both the above appeals and the learned Government Advocate contra what could be assessed from the above Criminal Appeals is that both the above appeals have arisen out of one and the same judgment dated 19/10/2000 rendered in S.C.No. 101 of 1997 by the Court of Principal Sessions Judge, Tuticorin thereby convicting all the accused Nos. 1 to 3 who faced the trial before the lower Court for the offence under Section 304 (1) read with 34 I.P.C. and sentencing them to under go rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- in default to undergo a further Rigorous Imprisonment for two years.

20. The case of the prosecution is that the first accused having become aggrieved against his own brother, the deceased who joined hands with another brother of them namely P.W.5 who was at Madras, acted against his interest in proposing to leave the portion of the land belonging to the first accused and the tractor he purchased, to be sold and the loan amount realised in order to save the lands of the other brothers, aggrieved against the said proposal and to wreak vengeance against the deceased brother, the first appellant in C.A.No.1189 of 2000 joined hands with the second appellant, who is the second accused and the other accused the appellant in C.A.No. 173 of 2001 and all of them armed with M.Os. 1 to 3 respectively on 29/2/1996 at about 4.00 a.m. assaulted the deceased while he was sleeping in the motor and pump set room near the common well in the field and caused his instantaneous

death. P.W.1 is the wife of the deceased, P.W.2 their relative One Ramakrishnan and P.W.3 Murugan who was sleeping along with the deceased have been examined as eye witnesses and they have confirmed the case of the prosecution without any variation or violent contradiction so as to create doubts and hence so far as these eye witnesses are concerned, the case of the prosecution has been held to have been proved. The other witnesses. P.Ws 5 to 10 are either the mahazar witnesses or the Bank Deputy Manager who would speak to the facts of extending the loan in favour of the first accused.

21. Further vital evidence comes forth from P.W.11 the Doctor who performed the post-mortem on the body of the deceased who would categorically fixed the time of occurrence by 4.00 a.m., thus himself shattering the finding that there had been semi digested food particles weighing 80 grams found by himself in the stomach of the deceased. However, this medical witness may not be knowing as to what time the deceased took his last meal. But, P.W.1 in her cross-examination would depose to the effect that her husband took his meal around 9.00 p. m., the previous night and went to sleep in the pump set room. If it is so, the doubt that is raised on the part of the defence counsel that the normal time for digestion since being 2 to 3 hours in a human being, the food that had been taken by the deceased around 9.00 p.m. the previous night should have been at any cost digested and gone out of the stomach completely within 12.00 midnight and for 80 grams of semi-digested food particles to remain in the stomach, the occurrence should have taken place around 11.30 or 12.00 the previous night and not at 4.00 a.m. the next morning which only falsifies the medical evidence, since the last meal that was taken by the deceased as fixed by P.W.1 was 9.00 p.m. the previous night on 28/2/1996.

22. On the contrary, on the part of the learned Government Advocate it would be argued that the P.W.11, the Doctor who performed the post-mortem on the body of the deceased has very clearly offered his opinion in due consideration of not only the stomach contents but also the other aspects found in the body like Rigor Mortis and the other conditions of the organs and the system has fixed the death to have taken place 11 + hours prior to the post-mortem, which was held between 3.30 to 5.00 p.m. on 29/2/1996 thereby very clearly stating that the occurrence should have taken place around 4.00 a.m. on 29/2/1996, which is exactly the case of the prosecution. Therefore, while direct evidence comes forth from P.W.11 and Ex.P.11 the post-mortem certificate in the above said manner, it is the responsibility of the defence to have interrogated the Doctor regarding the fixing of the time of death of the deceased at 4.00 a.m. on 29/2/1996 in respect of the stomach contents as found by him in the light of the evidence of P.W.1 and no such effective cross examination has been either held with P.W.11 Doctor nor any positive result obtained and therefore, this Court is of the view that the opinion of the Doctor given in Ex.P.11, and in his oral evidence only confirms the case of the prosecution and the same has to be held valid and reliable.

23. The other evidences adduced orally, documentarily and through the material objects also would only suggest the occurrence to have taken place at the time, place and in the manner alleged without any improbability or unreliability or violent contradictions and therefore, there

is no point in loitering too much about minor and negligible points.

24. However, the learned counsel for the appellants would point out that the presence of the appellant in C.A.No. 1189 of 2000, the accused No.3 before the lower Court is doubtful from the very manner in which he is said to have been found assaulting the deceased. However, such minute points cannot weigh heavily while a overall decision is taken regarding the whole occurrence in an integrated manner and hence it has to be concluded that the lower Court itself has considered the position and has taken a lenient view to convict all the appellant/accused Nos. 1 to 3 under Section 304 (1) read with 34 I.P.C. awarding a sentence of Rigorous Imprisonment for 10 years and of a fine of Rs.5,000/-, thus avoiding the conviction under Section 302 I.P.C and a capital punishment with which the appellants must be satisfied.

25. There is absolutely no lack of evidence or less evidence nor is there any legal flaw or inconsistency nor any other legal infirmity of lacuna worth being considered or any patent legal error or perversity in approach has been either pointed out or seen to have crept into and therefore, the interference of this Court sought to be made into the judgment of the trial Court in both the above Criminal Appeals is neither necessary in the circumstances of the case nor required under law and the only conclusion that could be arrived at by this Court is to dismiss both the above Criminal Appeals confirming the judgment of the lower Court.

In result

(i). there is no merit in both the above Criminal Appeals and they are dismissed.

(ii). the judgment dated 19/10/2000 rendered in S.C.No. 101 of 1997 convicting the appellants under Section 304 (1) read with Section 34 I.P.C. and sentencing each of the appellants to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.5,000/- in default a further Rigorous Imprisonment for two years is hereby confirmed.

mvs.

Index: Yes

Internet: Yes

To

The Principal Sessions Judge, Tuticorin.

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